

**MINUTES OF PUBLIC MEETING
FOR THE CORRECTIONS OFFICER RETIREMENT PLAN LOCAL BOARD
FOR THE JUDICIARY**

A Public Meeting of the Corrections Officer Retirement Plan Local Board for the Judiciary was convened Tuesday, September 10, 2019 at 10:00 a.m., Conference Room 109, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

Board Members Present in Conference Room 109: Kevin Kluge, Chair; Jason Hathcock; Jennifer Fish

Board Member Present by Conference Call: Scott Mabery

Also Present in Conference Room 109: Vanessa Haney, Board Secretary; Alicia Bocardo, Recorder; Cynthia Kelley, Board Attorney; Ottmar & Associates, Court Reporter; Phil Hanley

Call to Order:

Approval of the Minutes:

August 6, 2019 – Public Meeting Minutes

August 6, 2019 – Executive Session

MOTION: A motion to approve the public meeting minutes and the executive session minutes of the August 6, 2019 meeting was made by Jason Hathcock. The motion was seconded and passed unanimously; minutes stand approved. **CORP 2019-35**

Consideration of Disability Applications:

Disability Application #19-01 – IME Decision

The Board received Application #19-01 for Accidental Disability benefits from Arthur L. Waterman on May 1, 2019.

The applicant is a Pima County Surveillance Officer who is on FMLA as of June 1, 2019. The applicant is eligible for normal retirement with 21.336 years of service and is therefore only eligible for accidental disability.

The applicant identified the disabling conditions as: “multiple injuries from 2014-2018 and degenerative disc issues.”

The applicant was notified via certified letter that the Board would consider the application at this meeting and of the applicant’s right to attend.

The applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting.

The applicant provided medical reports of findings and treatment with the application. The application and medical reports were provided to the Board.

The criteria for Accidental Disability benefits per A.R.S. §38-881 are: "accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

- (a) Physical contact with inmates, prisoners, parolees or persons on probation.
- (b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.
- (c) A job-related motor vehicle accident while on official business for the employee's employer. A job-related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job-related motor vehicle accident do not meet the conditions for accidental disability.

The applicant's physical exam dated May 16, 2007 was provided to the board for review. The exam report identified an "old left shoulder injury" and "asthma" as pre-existing conditions.

Dr. George Gendy performed an Independent Medical Examination (IME) of the applicant on July 15, 2019. A copy of Dr. Gendy's IME report was provided to the Board.

A copy of A.R.S. §38-886 governing Local Board consideration of applications for Accidental Disability was included for reference purposes.

The Chair noted that Mr. Waterman was in attendance via conference call.

The Chair advised the Board that executive session can be held to receive legal advice.

The Chair stated that the disability case, #19-01 was a unique case for two reasons. First, the member had not severed his employment with county. Second, the applicant, Arthur Waterman, claimed multiple injuries on the application.

The Chair stated that was there was a question reserved for the Board Attorney Cynthia Kelley to discuss in open session. The Chair inquired when Mr. Waterman would have to terminate his employment if disability benefits were approved.

The Board attorney Cynthia Kelley stated that, typically, when disability benefits are approved, the applicant must sever employment immediately or by the end of the month. The Board Attorney asked whether Mr. Waterman could move to a light duty position.

Board member Jason Hathcock responded that employee accommodation is granted on a case by case basis and is dependent on the specific county and department.

Board member Scott Mabery asked Mr. Waterman if he was placed on light duty. Mr. Waterman replied that his employer stated that there were no light duty positions for surveillance officers because all surveillance officer positions require field work.

Board member Scott Mabery addressed another question to Mr. Waterman by inquiring if there were other job opportunities available in the surveillance officer department. Mr. Waterman replied that there was not and that he did not have the college education to become a probation officer.

Board member Scott Mabery requested clarification on the IME report where the applicant was listed as police officer instead of a surveillance officer. Mr. Waterman confirmed that the report did incorrectly state his title, and that during the timeline outlined he was in fact a surveillance officer not police officer. The Chair added that medical reports will often erroneously title officers under the different position classification as physicians/doctors do not always make the right distinction.

Board member Jason Hathcock requested confirmation from Mr. Waterman if he was still on FMLA and not on light duty. Mr. Waterman stated that he was on FMLA but that his employment with Pima County will cease on September 13, 2019 regardless of the Board's decision.

Board member Jason Hathcock addressed the response on the Accidental Disability Questionnaire regarding pre-existing conditions as it contradicted the opinion report provided. He added that the questionnaire outlined the following question: "during your examination of all medical evidence did you discover any pre-existing conditions or injuries that contributed to the disability" to which the IME doctor noted "yes."

Board member Jason Hathcock explained that the IME doctor noted pre-existing conditions in the opinion report but then described the pre-existing conditions as non-contributing factors to the main source of the disability injury. The IME doctor noted Mr. Waterman's neck injury as the main source resulting in disability. Because the doctor's list of pre-existing conditions does not contribute to the neck injury, Board member Jason Hathcock stated that the IME doctor should have listed "no" instead of "yes" on the questionnaire.

Board Attorney Cynthia Kelley informed the Board that during disability cases that include an accumulation of injuries, IME doctors do not always make a clear distinction between injuries taken place before the actual disability injury and pre-existing conditions attributing to the main source of a disability injury claimed. She added that IME doctors often include all predated injuries as part of pre-existing conditions and that for the Board's purpose of "pre-existing conditions" to determine disability benefits decision was taken out of context.

Board Attorney Cynthia Kelley advised the Board to include an acknowledgement of discussion and resolution regarding the pre-existing questionnaire discrepancy in the motion.

MOTION: A motion to approve the application for Accidental Disability Retirement benefits from Applicant #19-01, Arthur Waterman, based on the findings of the Independent Medical Evaluation conducted by Dr. George Gendy for the Local Board, as set forth in his report dated July 15, 2019 and the Form C5-LB-O dated July 15, 2019 with the understanding that the question regarding the pre-existing condition had been discussed and resolved by the Board and to approve an Accidental Disability Benefit for Arthur Waterman in about the amount of \$2,141.03, was made by Jason Hathcock. The motion was seconded and passed unanimously. CORP 2019-36

Status Update: Membership Audit

The Board Secretary informed the Board that 47 discrepancies were identified in 2019 audit. 37 discrepancies have been resolved and the remaining 10 are still pending. She stated that staff is working with the counties to obtain complete records for the members in question.

The Board Secretary advised the Board that one discrepancy includes a Notice of Retiree Return to Work that will be placed on a future agenda for the Board's review. She also added that some of the discrepancies are pending membership forms and or physical exams.

Additionally, the Board Secretary stated that she anticipates having all the pending issues resolved by the October 8, 2019 meeting.

Approval of Normal Retirement Benefits:

There were three applications for Normal Retirement benefits submitted for the Board's approval pursuant to A.R.S. § 38-893 (D).

MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts, effective September 1, 2019 was made by Jennifer Fish. The motion was seconded and passed unanimously. CORP 2019-37

John Campbell	\$2,416.28
Jack Forrester	\$2,125.05
Michael Holland	\$3,445.50

Approval of Survivor Benefits:

An application for survivor benefits was submitted for the Board's approval pursuant to A.R.S. §38-887.

MOTION: A motion to approve the payment of a survivor benefit to the following applicant in about the following amount was made by Jennifer Fish. The motion was seconded and passed unanimously. CORP 2019-38

Member: Eugene Valadez (Retired Member, deceased June 9, 2019)

Benefit Payable to Spouse Carmella Valadez beginning July 31, 2019: \$2,110.25

Approval of Membership:

The Local Board may consider and vote on the approval of the following requests for membership or defer decision to a later date:

MOTION: A motion to approve the 13 applicants listed on the agenda for this meeting for membership in CORP pursuant to A.R.S. §38-893.D and to note for the record that the physical examinations for Christopher Gil, Eddie Hernandez, Amanda Hurtt and Lucero Santana identified a physical or mental condition or injury that existed or occurred before

their date of membership in the plan, was made by Jason Hathcock. The motion was seconded and passed unanimously. **CORP 2019-39**

Gil, Christopher	Navajo	07/28/2019
Gomez, Humberto	Maricopa	11/19/2018
Greene, TaJuan	Pinal	04/22/2019
Hernandez, Eddie	Maricopa	05/12/2019
Hurt, Amanda	Yavapai	03/11/2019
McLellan, Eric	Maricopa	07/15/2019
Nunez, Melissa	Maricopa	08/12/2019
Ramirez, Jesus	Maricopa	07/29/2019
Salazar Warnes, Denisse	Maricopa	08/04/2019
Santana, Lucero	Yuma	02/19/2019
Tiburcio, Lorena	Cochise	11/18/2018
Van Der Noord, Heather	Apache	08/04/2019
Wilson, Demesha	Pinal	08/04/2019

See Attachment A to these minutes for details of the membership approved at this meeting.

Future Agenda Items:

The Board Secretary advised the Board that Matthew Baack has requested to appeal the Board's decision about his ordinary disability application. She stated that Mr. Baack is currently working on gathering additional evidence to present to the Board. The Board Secretary advised the Board that the rehearing will likely be placed on the November 5, 2019 meeting agenda because Mr. Baack has indicated that he will submit the documents near the end of his allotted 60-day period.

Board member Jason Hathcock inquired about the appeal process. The Board Attorney explained that applicants are granted the right to appeal by presenting additional documentation at a rehearing. If the applicant should decide to go beyond the Board after the rehearing, the case would have to be submitted to the Superior Court and not Public Safety Personnel Retirement System.

The Chair asked the Board Attorney in what situation another IME would be granted after an initial decision on disability benefits has been made. The Board Attorney responded that an IME will not be granted, unless specific additional evidence has been provided to Board to substantiate and justify another IME. She added that unless that evidence is provided, the Board will rule based on the initial IME findings.

The Board Secretary also informed the Board that an application for Death Benefits will be placed on the agenda for the October 8, 2019 meeting.

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 10:23 a.m.

Transcribed September 11, 2019